

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

KARL JULIUS JAMES,

Petitioner,

v.

Case No. 97-C-512

GARY McCAUGHTRY,

Defendant.

DECISION AND ORDER

The petitioner, Karl Julius James (“James”), moves the Court pursuant to Fed. R. Civ. P. 60(b)(6) to vacate an order entered almost *ten years ago*. On July 9, 1997, the Court dismissed James’ petition for a writ of habeas corpus under 28 U.S.C. § 2254.

The basis for the instant motion is confusing at best, but James appears to argue that the underlying petition should have been returned to him, presumably without prejudice, because he failed to pay the filing fee. Accordingly, this motion is not a disguised “successive petition,” as it does not directly implicate the validity of his underlying conviction. *See, e.g., Rodwell v. Pepe*, 324 F.3d 66, 70 (1st Cir. 2003) (“When the motion’s factual predicate deals primarily with the constitutionality of the underlying state conviction or sentence, then the motion should be treated as a second or successive habeas petition”). While James’ likely motive is to somehow vacate the decision to deny his initial petition and then file a different petition, the Court cannot say that the instant motion in any way attacks his underlying conviction.

However, James’ argument is specious because the record reflects that he requested leave to proceed *in forma pauperis* (“IFP”) (Docket No. 2), and the Court specifically denied this request

in its July 1997 Order. (Docket No. 4). This is a routine procedure, and the idea that the Court would vacate its Order because the petitioner filed an IFP petition instead of paying the filing fee is rather ludicrous. Moreover, a motion under Rule 60(b)(6) must be made within a “reasonable time,” and the instant motion is about as stale as humanly possible.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT James’ motion to vacate the Court’s July 9, 1997, Decision and Order is **DENIED**.

Dated at Milwaukee, Wisconsin, this 6th day of March, 2007.

SO ORDERED,

s/Rudolph T. Randa

HON. RUDOLPH T. RANDA

Chief Judge